1	· ·	•
1	KAMALA D. HARRIS	
2	Attorney General of California JAMES M. LEDAKIS	
3	Supervising Deputy Attorney General NICOLE R. TRAMA	
4	Deputy Attorney General State Bar No. 263607	
5	110 West "A" Street, Suite 1100 San Diego, CA 92101	
6	P.O. Box 85266 San Diego, CA 92186-5266	
7	Telephone: (619) 645-2143 Facsimile: (619) 645-2061	
8	Attorneys for Complainant	
	BEFORE THE	
9	BOARD OF REGISTERED NURSING DEPARTMENT OF CONSUMER AFFAIRS	
10	STATE OF CALIFORNIA	
11	In the Matter of the Statement of Issues	Case No. 2013 - 375
12	Against:	
13	ERICH UNDERHILL	STATEMENT OF ISSUES
14	Registered Nurse License Applicant	STATEMENT OF ISSUES
15	Respondent.	
16		
17	Complainant alleges:	
18	<u>PARTIES</u>	
19	1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Statement of Issues solely in	
20	her official capacity as the Executive Officer of the Board of Registered Nursing, Department of	
21	Consumer Affairs.	
22	2. The Board of Registered Nursing, Department of Consumer Affairs received an	
23	application for a Registered Nurse License from Erich Underhill (Respondent). On or about June	
24	19, 2012, Erich Underhill certified under penalty of perjury to the truthfulness of all statements,	
25	answers, and representations in the application. The Board denied the application on August 8,	
26	2012.	
27		
28		

3. This Statement of Issues is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

JURISDICTION

STATUTORY PROVISIONS

- 4. Section 2736 of the Business and Professions Code (Code) provides, in pertinent part, that the Board of Registered Nursing (Board) may deny a license when it finds that the applicant has committed any acts constituting grounds for denial of licensure under section 480 of that Code.
 - 5. Section 475 of the Code states:
 - (a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:
 - (1) Knowingly making a false statement of material fact, or knowingly omitting to state a material fact, in an application for a license.
 - (2) Conviction of a crime.
 - (3) Commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another.
 - (4) Commission of any act which, if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.
 - (b) Notwithstanding any other provisions of this code, the provisions of this division shall govern the suspension and revocation of licenses on grounds specified in paragraphs (1) and (2) of subdivision (a).
 - (c) A license shall not be denied, suspended, or revoked on the grounds of a lack of good moral character or any similar ground relating to an applicant's character, reputation, personality, or habits.
 - 6. Section 480 of the Code states:
 - (a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:
 - (1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order

granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

- (2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.
- (3) (A) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.
- (B) The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made.
- (b) Notwithstanding any other provision of this code, no person shall be denied a license solely on the basis that he or she has been convicted of a felony if he or she has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been convicted of a misdemeanor if he or she has met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate the rehabilitation of a person when considering the denial of a license under subdivision (a) of Section 482.
- (c) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact required to be revealed in the application for the license.

7. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

- (a) Considering the denial of a license by the board under Section 480; or
- (b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

8. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

As used in this section, "license" includes "certificate," "permit," "authority," and "registration."

28

9. Section 2761 of the Code states:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

- (a) Unprofessional conduct
- (4) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action against a health care professional license or certificate by another state or territory of the United States, by any other government agency, or by another California health care professional licensing board. A certified copy of the decision or judgment shall be conclusive evidence of that action.
- (e) Making or giving any false statement or information in connection with the application for issuance of a certificate or license.
- (f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof.

REGULATORY PROVISIONS

10. California Code of Regulations, title 16, section 1444 states:

A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to the following:

- (a) Assaultive or abusive conduct including, but not limited to, those violations listed in subdivision (d) of Penal Code Section 11160.
 - (b) Failure to comply with any mandatory reporting requirements.
 - (c) Theft, dishonesty, fraud, or deceit.
- (d) Any conviction or act subject to an order of registration pursuant to Section 290 of the Penal Code.
- 11. California Code of Regulations, title 16, section 1445 states:
- (a) When considering the denial of a license under Section 480 of the code, the board, in evaluating the rehabilitation of the applicant and his/her present eligibility for a license will consider the following criteria:
 - (1) The nature and severity of the act(s) or crime(s) under consideration as

grounds for denial.

- (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480 of the code.
- (3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).
- (4) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.
 - (5) Evidence, if any, of rehabilitation submitted by the applicant.

FIRST CAUSE FOR DENIAL

(Disciplinary Action Against Psychiatric Technician License)

- 12. Respondent's application is subject to denial under sections 480, subdivision (a)(3)(A) of the Code in that his psychiatric technician license was disciplined by the Board of Vocational Nursing and Psychiatric Technicians. This conduct would be a ground for discipline under section 2761(a)(4) of the Code for a registered nurse. The circumstances are as follows:
- (a) In a disciplinary action entitled "In the Matter of the Accusation Against Erich C. Underhill," Case No. PT-2008-3097, OAH No. 2011030974, the Board of Vocational Nursing and Psychiatric Technicians (BVNPT), issued a decision, effective February 3, 2012, in which Respondent's Psychiatric Technician License No. PT 30256 was revoked. However, the revocation was stayed and Respondent's Psychiatric Technician License was suspended and remained suspended until he took and passed the licensure exam that was required by the BVNPT of new applicants. Respondent was ordered to take and pass the exam within two years of the effective date of the Decision. If Respondent failed to pass the licensure exam, the orders of suspension and revocation were to be vacated and Respondent's Psychiatric Technician License would be revoked. If Respondent passed the licensure exam within two years of the effective date of the decision, then the order of suspension is immediately vacated and Respondent's Psychiatric Technician License would be placed on three years probation with certain terms and conditions. As of October 22, 2012, Respondent has not passed the licensure exam, therefore, his Psychiatric Technician License is still suspended by the BVNPT.

(b) The circumstances that led to the disciplinary action by the BVNPT are that while employed as a psychiatric technician at R.J. Donovan Correctional Facility, Respondent engaged in unprofessional conduct by making grossly incorrect entries in inmate patient records, by engaging in several acts of gross negligence, and by failing to document patient care in accordance with professional standards. Specifically, Respondent failed to pass medications to his inmate patients on September 23, 2008; Respondent failed to properly complete the required daily summaries for his inmate patients and instead photocopied one signed summary and used the copies for his other patients (pre-charting); Respondent failed to administer a court-ordered medication to his inmate patient on January 13, 2009; Respondent administered a controlled substance medication to the wrong inmate patient on February 9, 2009; Respondent failed to pass medications to approximately half of his inmate patients on February 10, 2009 and documented on the Medication Administration Record (MAR) that the "medications were not available" even though they were; Respondent failed to sign the narcotic count sheet on March 23, 2009; Respondent failed to complete the proper documentation on his inmate patient's MARs on several days; and Respondent failed to complete the mental health round records and failed to report this to his supervisor on June 20, 2009, causing the mental health round records to remain incomplete.

SECOND CAUSE FOR DENIAL

(May 13, 1998 Criminal Conviction for Disorderly Conduct: Soliciting Lewd Act)

- 13. Respondent's application is subject to denial under sections 480, subdivisions (a)(1) and (a)(3)(A) of the Code in that he was convicted of a crime that is substantially related to the qualifications, duties, and functions of a registered nurse. The conviction would be a ground for discipline under section 2761(f) of the Code for a registered nurse. The circumstances are as follows:
- (a) On or about May 13, 1998, in a criminal proceeding entitled *People of the State of California v. Erich Underhill*, in Westminster County Superior Court, case number 97WM09179, Respondent was convicted on his plea of guilty to Penal Code section 647(a), disorderly conduct: soliciting a lewd act, a misdemeanor. As a result of the conviction, Respondent was ordered to serve two years probation and to pay fines/fees. On or about November 9, 2004, Respondent's

THIRD CAUSE FOR DENIAL

(False Statement of Fact Required to be Revealed in the Application for Licensure)

- Respondent's application is subject to denial under sections 480, subdivisions (a)(3)(A) and (c) of the Code in that Respondent made a false statement on his license application. This act would be a ground for discipline under section 2761(e) of the Code for a
- On or about June 19, 2012, Respondent certified under penalty of perjury to the truthfulness of all statements, answers, and representations in his Application for Licensure by

Have you ever been convicted of any offense other than minor traffic If yes, explain fully as described in the applicant instructions. Convictions must be reported even if they have been adjudicated, dismissed or expunged or if a diversion program has been completed under the Penal Code or Traffic violations involving driving under the influence, injury to persons or providing false information must be reported. The definition of conviction includes a plea of nolo contendere (no contest), as well as pleas or verdicts of guilty. YOU MUST INCLUDE MISDÈMEANOR AS WELL

In response to this question, Respondent stated "No" and failed to declare his May 13, 1998 criminal conviction as detailed in paragraph 13, above.

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

- Denying the application of Erich Underhill for a Registered Nurse License;
- Taking such other and further action as deemed necessary and proper.

LOUISE R. BAILEY, M.ED., RI

Board of Registered Nursing

Department of Consumer Affairs

70624946.doc

28